

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION**

NICHOLAS D. BROWN

PLAINTIFF

V.

CAUSE NO. 3:16-CV-00697-CWR-RHW

**SUPERINTENDENT EARNEST LEE;
STATE OF MISSISSIPPI; and SONJA
STANCIEL**

DEFENDANTS

ORDER ADOPTING REPORT AND RECOMMENDATION

This matter is before the Court pursuant to the Report and Recommendation of United States Magistrate Judge Robert H. Walker entered on March 15, 2017. Docket No. 15. Therein, Judge Walker considered Defendants' motion to dismiss for failure to exhaust, as well as petitioner's motion to transfer the case to state court. Docket Nos. 10 and 13. The Magistrate Judge, noting that petitioner had already commenced a parallel state court action for post-conviction relief, recommended the Court dismiss the present claim without prejudice.

Petitioner objected the Magistrate Judge's Report and Recommendation. Docket No. 18. He acknowledged ongoing state court proceedings, and asked this Court to exercise its discretion to hold his habeas petition in abeyance while he exhausts his claims in state court. A stay and abeyance, however, "is only appropriate when the district court determines there was good cause for the petitioner's failure to exhaust his claims first in state court." *Rhines v. Weber*, 544 U.S. 269, 277 (2005). Petitioner failed to make any showing of cause excusing him from first exhausting his claim in state court.

This Court hereby adopts said Report and Recommendation as the order of this court. Defendants' motion to dismiss is granted, Docket No. 10, and petitioner's motion to transfer, Docket No. 13, is denied. Petitioner's claim is dismissed without prejudice for failure to exhaust

available state court remedies. The Court further finds that a Certificate of Appealability should not issue.

SO ORDERED, this the 24th day of April, 2017.

s/ Carlton W. Reeves
UNITED STATES DISTRICT JUDGE